

JOINT POWERS AGREEMENT

BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO AND THE GREATER CHIMAYO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION CONCERNING JOINT EFFORTS TO PROVIDE REGIONAL WATER TRANSMISSION FACILITIES TO SERVE THE COMMUNITY OF CHIMAYO

This Joint Powers Agreement is made this 29th day of April, 2008 pursuant to the New Mexico Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 et seq. (as amended), by and between the Board of County Commissioners of Santa Fe County, New Mexico (hereinafter referred to as "the County"), a political subdivision of the State of New Mexico, and the Greater Chimayo Mutual Domestic Water Association (hereinafter referred to as "the Association"), a Mutual Domestic Water Consumers Association and a political subdivision of the State of New Mexico organized under the Sanitary Projects Act, NMSA 1978, §§ 3-29-1 through 3-29-20.

RECITALS:

WHEREAS, the Association was organized to respond to the emergency needs of the community for a safe and reliable domestic water supply, which need has been recognized in the declarations of emergency by the Governor of New Mexico, the New Mexico Department of Environment, the New Mexico Department of Health, the County of Santa Fe and the County of Rio Arriba;

WHEREAS, the Greater Chimayo MDWCA merged with the older existing Chimayo MDWCA serving the historic Plaza del Cerro and adjacent neighborhoods, into a single Mutual Domestic Water Consumers Association, whose jurisdiction now encompasses the entire community of Chimayo in both Santa Fe and Rio Arriba counties;

WHEREAS, the water systems serving the community of Chimayo and which have now merged into the Association have faced persistent water emergencies from rapidly deteriorating

water lines, insufficient line capacity, insufficient redundancy in the system, insufficient fire protection, reliance on a single insufficient well for water supply and a lack of water meters;

WHEREAS, the Association has addressed the emergencies by creating a comprehensive plan to address the Chimayo community's water problems, received funding for construction of Phase I of the plan, acquired property and water rights to facilitate expansion of the system, drilled and developed three municipal wells below the Santa Cruz Dam, constructed a water storage tank at the Santa Fe County Fire Station near the Santuario de Chimayo, completed a water fill station at the Benny Chavez Community Center, and constructed a main 12" supply line from the wells and water storage tank across State Road 76 into Rio Arriba County;

WHEREAS, the total funding from State and Federal appropriations expended thus far for the ongoing Phase I construction of new water system infrastructure in Santa Fe County is \$ 2,072,390.31;

WHEREAS, after these expenditures, the Association has no additional funding from which to address other problems, including the emergency area called Plaza del Cerro and adjacent neighborhoods, consisting of approximately 50 households, and an additional 50 households that could be served by the replacement and extension of the existing system;

WHEREAS, the County is willing to assist with the development of regional solutions to chronic water problems experienced in the communities along the Santa Cruz River between Chimayo and the Rio Grande, and the Association desires to receive such assistance from the County and to become a partner with the County in regional water infrastructure planning and construction and maintenance of a regional water infrastructure;

WHEREAS, the Regional Water Transmission Line is a good candidate for County participation as a regional partner because it is well situated to integrate that portion of the project already constructed with regional solutions, such as the effort under way to implement Public Law 108-354 (The Chimayo Water Supply System and Espanola Facility Act of 2004) (see Exhibit B), and because joint ownership of such a facility will promote and facilitate regional solutions to the chronic water problems in the vicinity while preserving local control of local distribution systems;

WHEREAS, if such assistance were received, the Association would be able to complete that portion of the Phase I construction, (Phase I-C), which would replace and extend the existing system serving the Plaza del Cerro and adjacent neighborhoods, including the improvement of the existing system, providing for redundancy, and ensuring that customers receive safe, cost-efficient and reliable water service;

WHEREAS, pursuant to the New Mexico Joint Powers Agreements Act, the parties hereto are authorized to enter into agreements for the purpose of jointly exercising any power common to the parties;

WHEREAS, both the Association and the County have statutory authority to own, operate and maintain public water utility systems; and

WHEREAS, it is in the interest of the public health, safety and welfare for the parties to cooperate as set forth herein.

NOW THEREFORE, the parties mutually agree as follows:

1. COUNTY'S PURCHASE OF AN UNDIVIDED SHARE OF THE REGIONAL WATER TRANSMISSION LINE AND ASSOCIATED COMPONENTS.

1.1 The County agrees to purchase an undivided interest in the Regional Water Transmission Line as depicted in Exhibit B, "Regional Water Transmission Line" and Exhibit C,

"Regional Water Transmission Line Component Layout Plan," including the Regional Water Transmission Line, the fill station at the Benny Chavez Community Center, and water storage tank at the Fire Station.

1.2 The County shall purchase an interest in the property items described in the previous Article in the amount of Five Hundred Thousand Dollars (\$500,000). Any subsequent purchases of an interest in the Regional Water Transmission Line shall be accomplished by amendment to this Agreement.

1.3 The County's ownership interest in the Regional Water Transmission Line and associated components shall be valued as set forth in Article 3.2.

1.4 The County's ownership interest in the Regional Water Transmission Line at any specific time shall be established according to the formula set forth in Article 3.2 of this Agreement.

2. IMPROVEMENTS TO THE ASSOCIATION'S SYSTEM.

2.1 With the contribution provided by the County's participation as set forth in Article I, the Association shall improve and upgrade its wells, storage tanks, main and secondary supply lines, meters, fire protection system, and other components of its system (hereinafter referred to as "the System") as set forth herein. See attached Exhibit A, "Plaza Del Cerro Water Replacement Project".

2.2 Water supply lines will be replaced throughout the System to the extent funds are available. The existing water supply lines will be replaced with either eight inch or twelve inch lines as set forth in the engineering diagrams of Molzen Corbin & Associates, attached hereto as Exhibits A, B and C. The lines shall be of sufficient size to permit the Association to provide redundancy to its water system ("looping") as set forth herein, and to permit the Association to

transport water to support fire prevention throughout the Phase I construction in Santa Fe County.

2.3 At least five fire hydrants shall be installed on "stubs-outs" on the System's lines within that portion of the System comprised of the historic Plaza del Cerro and adjacent neighborhoods. The Santa Fe County Fire Marshall shall be consulted concerning the location and design of the fire hydrant system.

2.4 Water meters shall be installed that are capable of being read remotely by radio through the System, including the Plaza del Cerro and adjacent neighborhoods.

2.5 All improvements described herein shall be designed consistent with sound engineering principles and shall enable the replacement of the existing Plaza del Cerro system to be fully integrated and interconnected into Phase I of the System. The improvements described herein shall be constructed in a good workmanlike manner with reasonable construction supervision.

2.6 [Reserved]

3.0 OWNERSHIP OF IMPROVEMENTS.

3.1 All water system improvements constructed by the Association with previous funding, except those improvements described in Article 1 of this Agreement, shall be owned exclusively by the Association.

3.2 The Regional Water Transportation Line and associated components described in Article 1.1 and as set forth on Exhibits B and C shall be owned jointly by the Association and Santa Fe County. The ownership interest of each party shall be determined by the proportion of each party's contributions to the total cost of the Regional Water Transportation Line and associated components. Each time the County or the Association makes a contribution to the

Regional Water Transportation Line, the interest of each shall be adjusted to reflect the contribution. Any disposition of the Regional Water Transportation Line and associated components shall require approval of both parties hereto.

3.3 The County's purchase of an interest in the Regional Water Transmission Line from the Association shall be subject to NMSA 1978, Chapter 13 ("Public Purchases and Property"), and, if applicable, shall be subject to approval of the New Mexico State Board of Finance pursuant to NMSA 1978, Sections 13-6-1 through 13-6-8.

4.0 FINANCING OF IMPROVEMENTS.

4.1 All improvements described herein have been or will be constructed using revenue from three sources: (i) appropriations from P.L. 108-354; (ii) an appropriation from the New Mexico Legislature, the total amount of which expended thus far in that portion of the ongoing Phase I construction of new water system infrastructure which lies in Santa Fe County is \$ 2,072,390.31; and (iii) funds provided by Santa Fe County through this Agreement in the amount of \$500,000.

4.2 The County may purchase an additional interest in the Regional Water Transmission Line. Any such purchase shall become effective only after an amendment to this Agreement has been approved by the parties and approved by the Department of Finance and Administration and, if applicable, by the New Mexico State Board of Finance. The County may also may make direct expenditures ("in kind" contributions) to construct improvements to the Regional Water Transmission Line described herein, so long as the appropriate amendment to this Agreement and approval of the Department of Finance and Administration and, if applicable, the New Mexico State Board of Finance, is obtained. In the latter situation, the Association shall provide

access and/or easements as appropriate to support construction of improvements, access to design and/or engineering work as appropriate, and other items to support the work.

4.3 If additional funds become available that enable improvements to the Regional Water Transmission Line to be constructed that were not constructed because funds were not available from the sources referred to herein, the parties may nevertheless proceed to design, engineer and construct improvements with other funds, but such arrangement must be described specifically in an amendment to this Agreement. If additional contributions from the County are required to support additional design, engineering and construction work, the parties may proceed by appropriate amendment to this Agreement.

5.0 [Reserved]

6.0 PROCUREMENT, ADMINISTRATIVE SERVICES

6.1 The Association shall, pursuant to the New Mexico Procurement Code, NMSA 1978, Section 13-1-1 et seq. and applicable procurement regulations, procure all the design, engineering, and construction services necessary to construct the improvements described herein, except those provided by the County (in kind) and described herein. The Association shall provide all necessary administrative services related to the foregoing. The County shall have the right to examine all documents related to the foregoing.

7.0 REDUNDANCY AND LOOPING

7.1 Once the improvements described herein are made, the Association shall use the improvements to provide redundancy ("looping"), to improve operations of its entire System, and to transport water across the system for delivery purposes. All of the County's operations and activities pursuant to this Article shall be reviewed and approved by the Technical Committee for technical feasibility. In no event shall the Association's operations pursuant to this Article be

permitted to affect water quality for customers of the Association, affect delivery of water to customers of the Association, or impact service provided to the customers of the Association.

8.0 [Reserved]

9.0 [Reserved]

10.0 WATER RATES AND CHARGES.

10.1 The Association shall set its water rates and charges for its membership and upon the request of the County for informational purposes, the Association shall provide the County with its current water rates and charges.

11.0 TECHNICAL COMMITTEE.

11.1 A Technical Committee consisting of four persons is hereby created. Each party shall appoint two representatives to the Technical Committee; persons appointed to the Technical Committee should have technical expertise as a result of education, training or experience, in the design, operation or maintenance of water systems.

11.2 The Technical Committee shall be charged with ensuring that the governing bodies of the parties are provided with regular reports on the progress of the work of this Agreement, and shall provide a forum for intergovernmental discussions necessary to the continued operations of the System.

11.3 The Technical Committee shall meet as often as necessary given the situation, but shall meet at least biannually.

12.0 OPERATION AND MAINTENANCE OF THE SYSTEM.

12.1 The Association shall bear all the costs of day-to-day operation of the system, including but not limited to electrical costs associated with the well owned by the Association and its related infrastructure, pumping to fill the storage tank(s), maintenance of water rights,

new capital expenditures and permitting. The County shall have no responsibility to contribute to these costs, which shall be borne solely by the Association.

12.2 The parties hereto shall jointly bear the expense of routine maintenance of the Regional Water Transmission Line and associated component as set forth herein, and shall jointly bear the cost of capital expenditures related to the same improvements, in proportion to each party's ownership interest. Any routine maintenance and capital expenditure related to the Regional Water Transmission Line and associated components described herein shall be discussed by the Technical Committee prior to making the expenditure, who shall provide a recommendation to the parties hereto concerning the proposed maintenance or capital expenditure. If the Technical Committee recommends making the expenditure, the Association shall make the maintenance or capital improvement. The County shall reimburse the Association for its pro-rata share of the work, according to its-then ownership interest in the Regional Water Transmission Line and associated components. . If the maintenance or capital expenditure is not approved by the Technical Committee, the County may contribute to these costs but shall not be obligated to do so.

13.0 SERVICE AREA.

13.1 The parties recognize that the service area boundaries of the Association have been established which includes the entire Santa Fe County side of Chimayo. Any changes to the service area by the Association shall be discussed with the County to ensure continuing good relations between the parties.

14.0 PARTICIPATION IN REGIONAL WATER PLANNING AND CONJUNCTIVE USE STRATEGIES.

14.1 The Association and County shall participate in regional water planning efforts, to include the County's sustainability and conjunctive use strategies, with the goal of assuring a

reliable, safe and sustainable supply of water for Association county customers and for the County at large, to communicate and coordinate concerning water resource management, and to work towards sensible regional system integration and management.

14.2 The Association and the County shall work together to assure the sustainability of those ground water resources within the Santa Cruz watershed, and the region.

14.3 The Association shall cooperate with the County's Regional Plan as developed by the Regional Planning Authority (and adopted by the Board of County Commissioners and the Santa Fe City Council), the County's 40-Year Water Plan, the County's General Plan, and other relevant planning documents.

15.0 FIRE PROTECTION.

15.1 The Association, in consultation with the County Fire Marshall and other appropriate emergency management authorities, shall provide appropriate water pressure and volume to fire hydrants within its service area for fire protection. The Association shall not levy any charge or fee for the fire protection provided pursuant to this Article, except as set forth in Article 2, herein.

16.0 APPROPRIATED FUNDS.

16.1 In the event funds are not appropriated in a given year for either party's obligations described herein, either party will have the option of terminating this Agreement as of the date when funds are exhausted; provided, that this Agreement shall not terminate while the County owns an interest in the improvements described herein.

17.0 BOOKS AND RECORDS.

17.1 The Association shall maintain adequate and correct accounts related to the continuing operation of the improvements described herein, and of the operation and

maintenance of said Association, which accounts shall be open to inspection at any reasonable time by the parties hereto, their accountants or their agents.

17.2 The Association shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency.

17.3 The Association shall provide to the County a report setting forth the uses of the funds granted by the County.

17.4 There shall be strict accountability of all receipts and disbursements by the parties hereto.

18.0. TERMINATION

18.1 This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties and approval by the Department of Finance and Administration of the State of New Mexico, and approval, as necessary of the New Mexico State Board of Finance, and shall continue in full force and effect, subject to amendments, until terminated by the parties pursuant to this Agreement.

18.2 Any party's participation in this Agreement may be terminated by one hundred-eighty (180) days advance written notice or upon notice as provided in Article 18.0; provided, that this Agreement shall not terminate while the County owns an interest in the improvements described herein.

18.3 Upon termination of this Agreement by the parties, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of property and a full accounting.

18.4 Upon termination of this Agreement, all funds of the County that are held by the Water Association pursuant to Article 3.2 and which have yet not been applied against purchase

of the improvements described herein shall be returned to the County. Any other surplus funds remaining upon termination of this Agreement shall be returned to the parties in proportion to the contributions made.

19.0 AMENDMENT.

19.1 This Agreement may be amended by the parties from time to time, but any amendment shall be in writing, executed by all of the then parties thereto, and approved by the Department of Finance and Administration.

20.0 SEVERABILITY.

20.1 If any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been a part hereof.

21.0 INSURANCE.

21.1 The parties hereto shall carry public liability insurance coverage consistent with the responsibilities of each entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*

21.2 The parties shall, in addition, provide workers' compensation coverage for employees and carry property damage insurance on the equipment, buildings, facilities or personalty of any kind that comprise the improvements described herein.

21.3 The expense of obtaining and maintaining the required insurance shall be each party's sole obligation.

21.4 The insurance provided for under this Section shall be maintained in full force and effect throughout the duration of this Agreement.

21.5 Each party shall obtain the insurance coverage described herein from a reliable insurance company or, alternatively, from a risk self-retention pool such as that provided by the New Mexico Association of Counties, or approved policy of self-insurance. A copy of any insurance policy shall be provided to the other party at the party's request.

22.0 STRICT ACCOUNTABILITY, RECORDS, AUDITS, REPORTS.

22.1 The parties hereto shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete and correct records and statements pertaining to receipts, disbursements, and other financial matters pertaining to the improvements described herein.

22.2 Each year that the Association is required to perform an audit by an independent certified public accountant, the audit shall be provided to the parties and shall be made available to the public.

22.3 The records and statements prepared by the Association pursuant to this Article shall be open to inspection at any reasonable time by the parties hereto, their accountants and agents.

22.4 The Association shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency, and shall also render to the parties hereto, at reasonable intervals, such reports and accounting as the parties hereto may from time to time request.

23.0 LIABILITY.

23.1 No party hereto shall be responsible for liability incurred as a result of one of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement shall be subject to the privileges and immunities of the New Mexico Tort Claims Act (as amended).

24.0 THIRD PARTY BENEFICIARY.

24.1 The Parties to this Agreement do not and do not intend to create in the public, any member thereof, or any person, any rights whatsoever such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

25.0 DISPUTE RESOLUTION.

25.1 The Parties to this Agreement may use any and all methods of dispute resolution, up to and including court action or binding arbitration, to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally. Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within thirty days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party proposing that the dispute be submitted to binding arbitration. Any dispute requiring notice shall be reported to the next meeting of the respective County and Association governing bodies. If one party refuses to submit to binding arbitration, then binding arbitration cannot be used by the parties to resolve their dispute. If both governing bodies agree on binding arbitration, it shall proceed in accordance with the model guidelines of the American Arbitration Association. Such notice shall contain the name of a proposed arbitrator, and in the event the other party does not agree with the proposed arbitrator, the model guidelines of the American Arbitration Association shall be used to select an arbitrator and govern the conduct of the arbitration, rendering of an award and enforcement of the award consistent with New Mexico law. Within 60 days of notice an arbitrator shall be

appointed and within 120 days of notice the arbitrator shall prepare an award. The arbitrator's award shall be binding on the parties.

25.2 If the parties do not agree on binding arbitration, then either party may seek redress of their respective issues in a state court of competent jurisdiction.

26.0 ENTIRE AGREEMENT.

26.1 This Agreement contains the Entire Agreement between the parties hereto with regard to the matters set forth herein.

27.0 BINDING EFFECT.

27.1 This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns.

28.0 OTHER DOCUMENTS.

28.1 The parties agree to execute such further and other agreements as reasonably may be required from time to time to carry out the provisions of this Agreement.

29.0 LAW.

29.1 The laws of the State of New Mexico shall govern this Agreement.

30.0 NOTICES.

30.1 Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

To the County: Santa Fe County Utilities Director
Santa Fe County
205 Montezuma
Santa Fe, N.M. 87505
Phone: 986-6210
Fax: 992-8421

With a copy to: County Manager
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
Phone: 986-6200
Fax: 986-6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
Phone: 986-6279
Fax: 986-6362

To the Association: Ilean Martinez, President
Greater Chimayo MDWCA
P.O. Box 474
Chimayo, NM 87522

Phone: (505) 351-4311

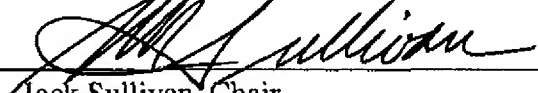
Attorney for GCMDWCA

Ted J. Trujillo
P.O. Box 2185
Espanola, NM 87532

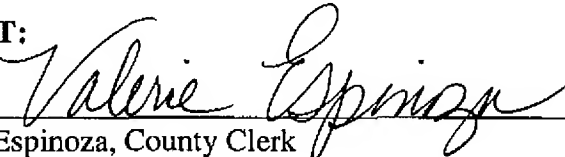
Phone: (505) 753-5150
Fax: (505) 753-4759

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized officers, agents or representatives effective as of the date and year first written above.


**THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY, NEW MEXICO**

By: 
Jack Sullivan, Chair

ATTEST:


Valerie Espinoza, County Clerk

Approved as to form:


Stephen C. Ross, County Attorney



**GREATER CHIMAYO MUTUAL DOMESTIC
WATER CONSUMERS ASSOCIATION**

By: *Sharon Matting*
Its President

ATTEST:

[Signature]
Secretary

Approved as to form:

[Signature]
Association's Attorney



**APPROVED BY THE DEPARTMENT
OF FINANCE AND ADMINISTRATION**

By: _____

(Title) *Dep. Secretary*

(Date) *5/28/8* *pk*

**APPROVED BY THE NEW MEXICO
STATE BOARD OF FINANCE**

By: _____

Date: _____

